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IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his )  
capacity as ATTORNEY GENERAL )  
OF THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C. MILES TOLBERT,) )  
in his capacity as the )  
TRUSTEE FOR NATURAL RESOURCES) )  
FOR THE STATE OF OKLAHOMA, )  
 )  
Plaintiff, )  
 )  
vs. ) 4:05-CV-00329-TCK-SAJ  
 )  
TYSON FOODS, INC., et al, )  
 )  
Defendants. )

- - - - -  
THE VIDEOTAPED DEPOSITION OF  
BERTON FISHER, PhD, produced as a witness on  
behalf of the Defendants in the above styled and  
numbered cause, taken on the 23rd day of January,  
2008, in the City of Tulsa, County of Tulsa, State  
of Oklahoma, before me, Lisa A. Steinmeyer, a  
Certified Shorthand Reporter, duly certified under  
and by virtue of the laws of the State of Oklahoma.

A P P E A R A N C E S

FOR THE PLAINTIFFS: Mr. David Page  
Mr. Richard Garren  
Attorneys at Law  
502 West 6th Street  
Tulsa, OK 74119  
-and-  
Mr. Louis Bullock  
Attorney at Law  
110 West 7th Street  
Suite 707  
Tulsa, OK 74119

FOR TYSON FOODS: Mr. Robert George  
Attorney at Law  
The Three Sisters Bldg.  
214 West Dickson Street  
Fayetteville, AR 72701

FOR CARGILL: Mr. John Tucker  
Attorney at Law  
100 West 5th Street  
Suite 400  
Tulsa, OK 74103

FOR SIMMONS FOODS: Mr. John Elrod  
Attorney at Law  
211 East Dickson Street  
Fayetteville, AR 72701  
-and-  
Ms. Vicki Bronson (via  
phone)

FOR PETERSON FARMS: Mr. Scott McDaniel  
Mr. Craig Mirkes  
Attorneys at Law  
320 South Boston  
Suite 700  
Tulsa, OK 74103

**TULSA FREELANCE REPORTERS**  
**918-587-2878**

1 FOR GEORGE'S:

Mr. Paul Thompson  
Attorney at Law  
221 North College  
Fayetteville, AR 72701

4 FOR CAL-MAINE:

Mr. Robert Sanders  
Attorney at Law  
2000 AmSouth Plaza  
P. O. Box 23059  
Jackson, MS 39225

8 FOR WILLOW BROOK:

Ms. Jennifer Griffin  
Attorney at Law  
314 East High Street  
Jefferson City, MO 65109  
(Via phone)

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1 VIDEOGRAPHER: Thank you. The witness may  
2 be sworn in.

3 BERTON FISHER, PhD,  
4 having first been duly sworn to testify the truth,  
5 the whole truth and nothing but the truth, testified  
6 as follows:

7 MR. PAGE: Robert, before we begin, can we  
8 have an agreement that we'll reserve objections  
9 except as to form?

10 MR. GEORGE: Certainly. 09:01AM

11 MR. PAGE: Thank you.

12 DIRECT EXAMINATION

13 BY MR. GEORGE:

14 Q Dr. Fisher, would you state your full name  
15 please? 09:01AM

16 A John Berton Fisher.

17 Q Dr. Fisher, you understand you're here today  
18 to give a deposition in connection with opinions  
19 that you have put forward on behalf of the State of  
20 Oklahoma in a case filed in the Northern District of 09:01AM  
21 Oklahoma?

22 A Yes.

23 Q Okay. You've given a deposition before;  
24 correct?

25 A I have. 09:01AM

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1       **A**       In writing.

2       **Q**       Okay, and did you produce those as part of  
3       your materials?

4       **A**       I produced reports relevant to waste disposal  
5       as part of my materials, and they were previously       01:53PM  
6       produced to you in the documents that are referred  
7       to specifically by Bates number.

8       **Q**       Okay. I'll tell you what I saw in your  
9       physical production and I've looked at what you  
10      referred me to in the Bates numbers. What I saw in       01:53PM  
11      your physical production was photos and videos, not  
12      written reports.

13      **A**       I know there are written reports in there.

14      **Q**       Okay. In your physical production?

15      **A**       Yes.       01:53PM

16      **Q**       Okay. To the extent you received reports from  
17      investigators regarding waste disposal practices or  
18      land application of poultry litter, whatever  
19      terminology you want to use, have you produced  
20      those?       01:53PM

21      **A**       To my knowledge, yes.

22      **Q**       Okay. Did any of these reports or your  
23      conversations with the investigators provide you  
24      with information that any person involved in the  
25      land application of poultry litter in the watershed       01:54PM

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1 was breaking the law?

2 MR. PAGE: Object to the form.

3 A There is no observation as to that.

4 Q Okay. So the eight investigators who spent a

5 considerable amount of time in the watershed 01:54PM

6 observing litter application practices never came

7 back to you and said we caught somebody violating

8 the law?

9 MR. PAGE: Object to the form.

10 Q Is that true? 01:54PM

11 A I received reports and there are reports of  
12 spreading which appears too near streams. You know,  
13 that's -- that appears to be a violation.

14 Q Okay. You're basing that on your review of a  
15 video? 01:54PM

16 A Review of a video and their verbal report and  
17 I believe the written report as well.

18 Q Let me ask the question again. Did any of the  
19 eight reporters who spent significant time in the  
20 watershed come back to you and say, Dr. Fisher, we  
21 caught somebody breaking the law? 01:54PM

22 MR. PAGE: Same objection.

23 A No.

24 Q Were they -- were the investigators given a  
25 tutorial on distances from streams and requirements 01:55PM

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1 for land application of poultry litter?

2 **A** Yes.

3 **Q** They were? Who provided that?

4 **A** It was provided from materials from the

5 Department of Agriculture. 01:55PM

6 **Q** If there had been an observed violation of the

7 law, would you have reported it to the Oklahoma

8 Department of Ag or to the Arkansas Natural

9 Resources Commission?

10 **A** Yes, I would have. Oh, and let me think here. 01:55PM

11 In fact, there was -- there appeared to be a

12 violation that was reported and had to do with

13 improper composting of dead chickens. That was

14 reported to Dan Parrish. Poultry inspector was sent

15 on that -- out to inspect. I don't know the results 01:56PM

16 of that.

17 **Q** That was my question. Do you know what

18 happened as a result of that report?

19 **A** I do not.

20 **Q** Okay. Other than that one instance relating 01:56PM

21 to composting of dead chickens, did you make any

22 other reports to agencies in either Arkansas or

23 Oklahoma of real or perceived violations of the law

24 with respect to the handling or application of

25 poultry litter? 01:56PM

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1 are produced by soils, how many tons of hay per acre  
2 are produced in the Illinois River watershed now?

3 A That would be beyond my expertise and within  
4 that of other experts in this matter.

5 Q Do you have any concept as to the value of the 05:54PM  
6 hay that's produced in the watershed at the present  
7 time?

8 A I do not. That would be other experts in this  
9 case.

10 Q Who would that be? 05:54PM

11 A I believe Dr. Gordon Johnson might be able to  
12 testify to that.

13 Q When poultry litter from a grower is sold, who  
14 sets the price of that?

15 A One would hope the market. I don't know who 05:54PM  
16 sets the price for poultry litter.

17 Q Who gets the money?

18 A Who gets the money? I -- the owner of the  
19 litter. The person who gets the money is the owner  
20 of the litter. 05:54PM

21 Q Do you know who gets the money now in the  
22 watershed?

23 A I do not.

24 Q On Page 7 of your affidavit you state that the  
25 geology and terrain of the Illinois River watershed 05:55PM